



No.70

July 14, 2004

S. 2610 — The United States–Australia Free Trade Agreement Implementation Act

S. 2610 was favorably reported without amendment by the Committee on Finance today, by a vote of 17-4.

Noteworthy

- S. 2610 would implement the Free Trade Agreement between the United States and Australia that was signed on May 18, 2004. The Agreement will be considered under expedited procedures known as “fast track” trade authority, which was granted by the Trade Act of 2002 (P.L. 107-210). Under this law, neither the reporting committee nor the Senate (nor the House) may amend the bill. Further, debate time in the Senate is limited to 20 hours, equally divided.
- Following the signing of the trade agreement on May 18, the Administration submitted the draft implementing legislation to Congress on July 6, 2004. In accordance with the Trade Act, implementing legislation subsequently was introduced into both chambers by the respective majority leaders as S. 2610 and H.R. 4759.
- H.R. 4759 was reported by the House Ways and Means Committee and placed on the Union Calendar on July 12 (H. Rept. 108-597). The House is expected to take up the bill on July 14.
- The United States-Australia Free Trade Agreement is the first free trade agreement between the United States and a developed country since the U.S.-Canada Free Trade Agreement was signed in 1988.
- More than 99 percent of U.S. exports of manufactured goods to Australia will become duty-free immediately upon entry into force of the Agreement, making it the most significant, immediate reduction of industrial tariffs ever achieved in a U.S. free trade agreement.

Highlights

- Both President Bush and Australian Prime Minister John Howard have stated passage of the agreement as among their top priorities for 2004. The agreement has wide support in Congress, and across the United States and Australia.
- Negotiations on the U.S.-Australia Free Trade Agreement (USAFTA) began in November, 2002, consisted of five rounds of discussions, and took more than one year to complete.
- On May 18, 2004, the agreement was signed by U.S. Trade Representative Robert Zoellick and Australian Trade Minister Mark Vaile. The White House sent the draft implementing legislation and supporting documents to Congress on July 6.
- Australia will be the seventh country to have a bilateral free trade agreement with the United States, joining Canada, Mexico, Israel, Jordan, Chile, and Singapore.
- This marks the first free trade agreement with a developed country since the U.S.-Canada Free Trade Agreement was signed in 1988.
- More than 99 percent of U.S. exports of manufactured goods to Australia will become duty-free immediately upon entry into force of the Agreement, making it the most significant, immediate reduction of industrial tariffs ever achieved in a U.S. free trade agreement.
- The USAFTA will phase-out textile and apparel tariffs over 15 years; offer immediate duty-free access of all U.S. agricultural exports to Australia; and provide an agreement on good practices and high levels of transparency in the financial services sector, among other provisions.
- It has been estimated that USAFTA will generate at least \$2 billion per year for both countries by 2010.
- The agreement commits Australia to improve its pharmaceutical-listing system with the intention of making the procedure more open and fair. It will: establish a review mechanism that allows the appeal of reimbursement decisions affecting new, innovative drugs; recognize the value of such innovative drugs; and create the Medicines Working Group that will provide a forum for continued dialogue between the two countries on future pharmaceutical matters beyond the free trade agreement.
- Many American businesses and business associations representing nearly every sector of the economy have expressed their support for the trade agreement.

Background

Negotiations on the U.S.-Australia Free Trade Agreement (USAFTA) began in November, 2002, consisted of five rounds of discussions, and took more than one year to complete. In May 2003, President Bush and Prime Minister Howard agreed to work toward completion of the USAFTA. The agreement was completed on February 8, 2004. On February 13, President Bush notified Congress of his intent to sign the USAFTA.

On May 18, 2004, the agreement was signed by U.S. Trade Representative Robert Zoellick and Australian Trade Minister Mark Vaile. The White House sent the implementing legislation to Congress on July 6, and it now must undergo congressional and Australian parliamentary ratification. The Agreement is broadly supported in Congress and across the United States and Australia, and both President Bush and Australian Prime Minister John Howard have labeled passage of the agreement as among their top priorities for 2004.¹

According to the Congressional Research Service (CRS), the USAFTA is a “comprehensive agreement” that would commit the United States and Australia to eliminating tariffs on most bilateral trade in goods, and also ensures fair, nondiscriminatory treatment in most areas of bilateral trade in services, government procurement, and in foreign investment.² USAFTA provides immediate access to Australia’s large market for agricultural products, financial services, electronic commerce, and investment.

Two-way annual goods and services trade with Australia is approximately \$28 billion, and the United States has a \$9 billion trade surplus with Australia.³ Australia is America’s ninth largest goods export market.⁴ It has been estimated that USAFTA will generate at least \$2 billion per year for both countries by 2010,⁵ with the U.S. manufacturing sector benefiting greatly under the agreement.⁶

Passage of the free trade agreement makes both an economic and a political statement. Australia has stood beside and fought with America in every major combat operation for the past 100 years. Passage would send a clear message to the Australian people that America values Australia’s friendship, loyalty, and willingness to share burdens just as much as it welcomes trade in goods and services.

Nearly every U.S. and Australian sector of the economy benefits from the USAFTA. Negotiations yielded concessions on some very controversial issues such as pharmaceutical access, beef imports, and investor state rules and protections. Arguably, no U.S. business sector

¹ For details, see RPC paper, “The U.S.-Australia Free Trade Agreement: Good for the Economy, Good for the Alliance,” dated July 13, 2004.

² CRS, “The Proposed U.S.-Australia Free Trade Agreement: Provisions and Implications,” May 27, 2004.

³ Office of the U.S. Trade Representative, “Fact Sheet: U.S. and Australia Complete Free Trade Agreement: *Trade Pact With Australia Will Expand U.S. Manufacturing Access to Key Pacific Rim Market*,” February 8, 2004.

⁴ Robert Zoellick, oped, “Don’t Get Bitter About Sugar,” *Wall Street Journal*, February 25, 2004.

⁵ *New Zealand Herald*, “NZ Weighs U.S. Trade Risk,” October 8, 2002.

⁶ International Trade Commission report estimates the USAFTA would increase U.S. goods exports by \$1.5 billion. See Report of the International Trade Commission, May 2004.

is negatively affected by this agreement. At worst, some business sectors will not see a change in their business opportunities. Some groups, though, have raised concerns — specifically related to sugar, dairy, and wheat provisions.

Under the terms of the USAFTA, tariff duties remain on sugar. U.S. and Australian negotiators could not agree on terms of sugar trading. As a result, sugar was excluded from the USAFTA, which caused several Members of Congress and business associations to protest that USTR may “exclude” other sectors in future FTA negotiations. The USTR clarified during testimony that the exclusion of sugar in the FTA is unique to Australia, and not necessarily a precedent for future agreements.

According to the USAFTA, the U.S. tariff-rate quotas (TRQ) on dairy product imports from Australia would be increased and phased-out over an 18-year period.⁷ Tariffs on within-quota imports would be eliminated immediately, while the tariffs on above-quota imports would remain unchanged. U.S. dairy groups and cow raisers, in particular the National Milk Producers Federation and the Ranchers-Cattlemen Action Legal Fund (R-CALF) USA, have stated that the trade agreement will hurt U.S. dairy farmers, stating: “In the long term it could be disastrous to the U.S. live cattle industry.”⁸ However, other dairy and cattle groups, such as the Dairy Trade Coalition and the National Cattlemen’s Beef Association, have praised USTR for retaining “over-quota duty rates” and for including “permanent tools designed to deal with potential market disruptions.”⁹

U.S. wheat growers have repeatedly called for the Australian government to end monopoly practices of its wheat board. U.S. Wheat Associates, a leading U.S. lobby organization for American wheat growers, stated their disappointment that the agreement “did not address inequities inherent in the AWB (Australian Wheat Board) monopoly.” It should be noted that during the bilateral negotiations, Australia indicated it was not prepared to negotiate AWB’s export monopoly in the FTA if the United States would not discuss its farm subsidies. Importantly, the United States has consistently maintained that subsidies must be discussed multilaterally in the World Trade Organization (WTO) Doha Round negotiations. In the end, USTR achieved success in making progress toward resolving this issue. Under the trade agreement, Australia will support the United States at the WTO in helping to achieve the end of government-run, market-distorting subsidies and commodity boards.

Bill Provisions

TITLE I – Approval Of, and General Provisions Relating To, the Agreement

This title approves the Agreement and establishes the regulatory authority for the President to implement the Agreement. The six sections of Title I clarify the relationship

⁷ CRS, “The Proposed U.S.-Australia Free Trade Agreement: Provisions and Implications,” May 27, 2004.

⁸ High Plains Journal, “R-CALF: Impact of FTA on Cattle Producers Depends on Congress,” February 25, 2004.

⁹ USTR, <http://www.ustr.gov/new/fta/Australia/quotes.htm>, accessed on July 12, 2004.

between the Agreement and federal and state law, authorize the President to establish an office to provide administrative assistance to dispute settlement panels, set forth consultation and layover requirements that must precede the President's implementation of any tariff modifications by Proclamation, and cover various other provisions relating to the approval of the Agreement.

TITLE II – Customs Provisions

This Title authorizes changes to U.S. customs law in order to implement the Agreement.

Sec. 201 – Tariff modifications: This section authorizes the President to modify, continue, eliminate, or establish duties as necessary or appropriate to carry out the terms of the Agreement.

Sec. 202 – Additional duties on certain agricultural goods: This section implements the agricultural safeguard provisions. Article 3.4 of the Agreement permits the United States to impose an agricultural safeguard measure, in the form of additional duties, on imports from Australia of an agricultural good listed in the U.S. schedule to Annex 3-A of the Agreement. The bill provides for three different types of agricultural safeguards: certain horticulture goods specified in Annex 3-A of the Agreement; certain beef goods imported into the United States above specified quantities (“quantity-based safeguard”) during the period from January 1, 2013 through December 31, 2022; and the same categories of beef goods if they are imported into the United States above specified quantities and the monthly average index price in the United States falls below the specified “trigger” price (“price-based safeguard”) beginning January 1, 2023.

No additional duty may be applied under section 202 if, at the time of entry, the good is subject to import relief under subtitle A of title III of this bill (the general safeguard) or chapter 1 of title II of the Trade Act of 1974 (“section 201” relief). The assessment of an additional duty under either the horticulture safeguard or the quantity-based beef safeguard shall cease to apply to a good on the date on which duty-free treatment must be provided to that good. There is no termination date for the price-based beef safeguard.

The sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the U.S. schedule may not exceed the lesser of the existing normal trade relation (NTR)/most favored nation (MFN) rate or the NTR/MFN rate imposed when the Agreement entered into force.

Sections 202(c)(4) and (d)(5) provide that the United States Trade Representative may waive the application of the quantity-based beef safeguard and the price-based beef safeguard if he determines that extraordinary market conditions demonstrate that a waiver would be in the U.S. national interest, after notice and consultation with the House Ways and Means and Senate Finance Committees and the appropriate private-sector advisory committees.

Sec. 203 – Rules of Origin: This section establishes rules of origin, meaning that it defines where goods must originate in order to be covered under the Agreement. For instance, goods that are wholly produced in Australia are covered, while goods that are simply combined or packaged in Australia are not. The rules of origin also cover: inputs into final products; spare

parts; and other origination issues. This section also authorizes the President to modify certain rules of origin, subject to consultation and layover provisions.

Sec. 204 – Customs User Fees: This section eliminates the merchandise processing fee for originating goods under the Agreement.

Sec. 205 – Disclosure of Incorrect Information: This section prohibits the imposition of a penalty upon importers who make an invalid claim for preferential tariff treatment under the Agreement if the importer acts promptly and voluntarily to correct the error and pays any duty owed. Importers have a 12-month grace period to correct invalid claims.

Sec. 206 – Enforcement of Textile and Apparel Rules of Origin: This section allows the Treasury Secretary to take “appropriate action” during a verification conducted to enforce textile and apparel rules of origin – such action includes suspending importation of certain goods while the government of Australia verifies whether the claims of origin of an Australian exporter or producer are accurate.

Sec. 207 – Regulations: This section allows the Treasury Secretary to issue regulations to carry out provisions related to rules of origin and Customs user fees.

TITLE III – Relief from Imports

This Title establishes import safeguards.

Subtitle A (Sec.311-316) – Relief from Imports Benefiting from the Agreement: This subtitle allows safeguard duties to be imposed on Australian imports if they cause or threaten to cause “serious injury” to a domestic industry producing a competitive article. The subtitle establishes various guidelines and timetables for such a process. The Subtitle also allows the President to provide trade compensation to Australia if safeguard relief is imposed.

Subtitle B (Sec. 321-328) – Textile and Apparel Safeguard Measures: This subtitle allows duties to be imposed on Australian textile or apparel imports if they cause or threaten to cause “serious damage” to a domestic industry producing a competitive article. The subtitle establishes various guidelines and timetables for such duties to be imposed, and directs the President to examine various economic factors, such as output, market share, and wages in determining whether serious damage exists. Relief may not exceed two years, and no import relief shall be available ten years after duties are eliminated under the Agreement. The subtitle also allows the President to provide trade compensation to Australia if textile and apparel safeguard relief is imposed.

Subtitle C (Sec. 331) – Cases Under Title II of the Trade Act of 1974.

TITLE IV – Procurement

This Title implements U.S. obligations under Chapter 15 of the Agreement. This amended definition will allow procurement of Australian products and services and other parties to free trade agreements that entered into force during the specified time period.

Administration Position

While no formal Statement of Administration Policy (SAP) has been released on S. 2610, the Administration has expressed repeatedly that it strongly supports passage of the U.S.-Australia Free Trade Agreement Implementation Act.

Cost

It has been estimated that USAFTA will generate at least \$2 billion per year for both countries by 2010,¹⁰ with the U.S. manufacturing sector benefiting greatly under the agreement.¹¹

The Congressional Budget Office estimates that enacting the bill would reduce revenues by \$29 million in 2005, by \$293 million over the 2005-2009 time period, and by \$884 million over the 2005-2014 period, net of income and payroll tax offsets. The bill also would increase direct spending by less than \$500,000 in 2005. Implementing the bill would cost less than \$500,000 in each year, subject to appropriation of the necessary amounts.¹²

Possible Amendments

Under trade promotion authority provided by the Trade Act of 2002, no amendments to this bill are permitted.

¹⁰ *New Zealand Herald*, "NZ Weighs U.S. Trade Risk," October 8, 2002.

¹¹ ITC report estimates the USAFTA would increase U.S. goods exports by \$1.5 billion. See Report of the International Trade Commission, May 2004.

¹² Data taken from House report 108-597.